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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

Case No. PT-2007-547

MICHAEL DUANE ROSE  
645 Montezuma Street  
Rio Vista, CA 94571

Psychiatric Technician License No.  
PT 28498

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the  
Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled  
matter.

This Decision shall become effective on October 27, 2012.

IT IS SO ORDERED this 27<sup>th</sup> day of September, 2012.



Todd D'Braunstein, P.T.  
President

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CAROL ROMEO  
Deputy Attorney General  
4 State Bar No. 124910  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2141  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
Probation Against:

12 **MICHAEL DUANE ROSE**  
13 **645 Montezuma Street**  
14 **Rio Vista, California 94571**

15 **Psychiatric Technician License No. PT**  
16 **28498**

17 Respondent.

Case No. PT 2007-547

OAH No. 2012031289

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) is the Executive Officer of the  
22 Board of Vocational Nursing and Psychiatric Technicians. She brought this action solely in her  
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the  
24 State of California, by Carol Romeo, Deputy Attorney General.

25 2. Respondent Michael Duane Rose (Respondent) is representing himself in this  
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 ///

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3. On or about March 24, 1993, the Board of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License No. PT 28498 to Michael Duane Rose (Respondent). The Psychiatric Technician License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. PT 2007-547 and will expire on May 31, 2014, unless renewed.

## JURISDICTION

4. Petition to Revoke Probation No. PT 2007-547 was filed before the Board of Vocational Nursing and Psychiatric Technicians (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 2, 2012. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

5. A copy of Petition to Revoke Probation No. PT 2007-547 is attached as Exhibit A and incorporated by reference as if fully set forth.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. PT 2007-547. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Petition to  
3 Revoke Probation No. PT 2007-547.

4 10. Respondent agrees that his Psychiatric Technician License is subject to discipline and  
5 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
6 below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Board of Vocational Nursing and  
9 Psychiatric Technicians. Respondent understands and agrees that counsel for Complainant and  
10 the staff of the Board of Vocational Nursing and Psychiatric Technicians may communicate  
11 directly with the Board regarding this stipulation and settlement, without notice to or participation  
12 by Respondent. By signing the stipulation, Respondent understands and agrees that he may not  
13 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers  
14 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the  
15 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
16 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
17 be disqualified from further action by having considered this matter.

18 12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
20 effect as the originals.

21 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
26 writing executed by an authorized representative of each of the parties.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Psychiatric Technician License No. PT 28498 issued to Respondent Michael Duane Rose (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for an additional two (2) years on the following terms and conditions.

**OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself, within thirty (30) days of the effective date of the decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

1. **COMPLIANCE WITH PROBATION PROGRAM.** Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program.

Upon successful completion of probation, the respondent's license will be fully restored.

2. **SUBMIT WRITTEN REPORTS.** Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain

1 statements relative to respondent's compliance with all the conditions of the Board's Program.  
2 Respondent shall immediately execute all release of information forms as may be required by the  
3 Board or its representatives.

4 In the first report, Respondent shall provide a list of all states and territories where he has  
5 ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse.  
6 Respondent shall provide information regarding the status of each license and any change in  
7 license status during the period of probation. Respondent shall inform the Board if he applies for  
8 or obtains a new nursing or psychiatric technician license during the period of probation.

9 Respondent shall provide a copy of the Board's decision to the regulatory agency in every  
10 state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric  
11 technician and/or registered nurse license.

12 **3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S).**

13 Respondent shall notify the Board, in writing, within five (5) days of any change in address or  
14 telephone number(s).

15 Respondent's failure to claim mail sent by the Board may be deemed a violation of these  
16 probation conditions.

17 **4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE.**

18 Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to  
19 reside or practice in another state. Periods of residency or practice outside of California shall not  
20 apply toward a reduction of this probation time period. If Respondent resides or practices outside  
21 of California, the period of probation shall be automatically extended for the same time period he  
22 resides or practices outside of California. The respondent shall provide written notice to the  
23 Board within five (5) days of any change of residency or practice.

24 Respondent shall notify the Board, in writing, within five (5) days, upon his return to  
25 California.

26 **5. MEETINGS WITH BOARD REPRESENTATIVE(S).** Respondent shall appear  
27 in person at meetings as directed by the Board or its designated representatives.

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1           6.   **NOTIFICATION TO EMPLOYER(S).** When currently employed or applying for  
2 employment in any capacity in any health care profession, Respondent shall notify his employer  
3 of the probationary status of Respondent's license. This notification to the Respondent's current  
4 health care employer shall occur no later than the effective date of the Decision. The respondent  
5 shall notify any prospective health care employer of the probationary status with the Board prior  
6 to accepting such employment. At a minimum, this notification shall be accomplished by  
7 providing the employer or prospective employer with a copy of the Board's Accusation and  
8 Disciplinary Decision.

9           The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse,  
10 Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical  
11 Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical  
12 health care positions.

13           Respondent shall cause each health care employer to submit to the Board all performance  
14 evaluations and any other employment related reports as required by the Board. Respondent shall  
15 notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of  
16 such an event.

17           Respondent shall notify the Board, in writing, within five (5) days of any change in  
18 employment status. Respondent shall notify the Board, in writing, if he is terminated or  
19 separated, regardless of cause, from any nursing or health care related employment with a full  
20 explanation of the circumstances surrounding the termination or separation.

21           7.   **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.** Respondent shall  
22 work in his licensed capacity in the state of California. This practice shall consist of no less than  
23 six (6) continuous months and of no less than twenty (20) hours per week.

24           Respondent shall not work for a nurses' registry or in any private duty position, a temporary  
25 nurse placement agency, as a faculty member in an accredited or approved school of nursing, or  
26 as an instructor in a Board approved continuing education course except as approved, in writing,  
27 by the Board. Respondent shall work only on a regularly assigned, identified and predetermined  
28 work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

1           8.    **SUPERVISION REQUIREMENTS.** Before commencing or continuing  
2 employment in any health care profession, Respondent shall obtain approval from the Board of  
3 the supervision provided to the respondent while employed.

4           Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the  
5 person who oversees or directs licensed vocational nurses, psychiatric technicians, certified  
6 nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during  
7 the period of probation except as approved, in writing, by the Board.

8           9.    **COMPLETION OF EDUCATIONAL COURSE(S).** Respondent, at his own  
9 expense, shall enroll and successfully complete a course(s) substantially related to the violation(s)  
10 no later than the end of the first year of probation.

11           The coursework shall be in addition to that required for license renewal. The Board shall  
12 notify the respondent of the course content and number of contact hours required. Within thirty  
13 (30) days of the Board's written notification of assigned coursework, Respondent shall submit a  
14 written plan to comply with this requirement. The Board shall approve such plan prior to  
15 enrollment in any course of study.

16           Upon successful completion of the course, respondent shall submit "original" completion  
17 certificates to the Board within thirty (30) days of course completion.

18           10.   **MAINTENANCE OF VALID LICENSE.** Respondent shall, at all times, maintain  
19 an active current license with the Board including any period of suspension.

20           If an initial license must be issued (Statement of Issues) or a license is reinstated, probation  
21 shall not commence until a license is issued by the Board. Respondent must complete the  
22 licensure process within two (2) years from the effective date of the Board's decision.

23           Should Respondent's license expire, by operation of law or otherwise, upon renewal or  
24 reinstatement, Respondent's license shall be subject to any and all conditions of this probation not  
25 previously satisfied.

26           11.   **LICENSE SURRENDER.** During probation, if Respondent ceases practicing due to  
27 retirement, health reasons, or is otherwise unable to satisfy the conditions of probation,  
28 Respondent may surrender his license to the Board. The Board reserves the right to evaluate

1 Respondent's request and to exercise its discretion whether to grant the request without further  
2 hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to  
3 the conditions of probation.

4 Surrender of Respondent's license shall be considered a disciplinary action and shall  
5 become a part of Respondent's license history with the Board. A licensee who surrenders his  
6 license may petition the Board for reinstatement no sooner than the following minimum periods  
7 from the effective date of the disciplinary decision for the surrender:

8 Three (3) years for reinstatement of a license surrendered for any reason other than a mental  
9 or physical illness; or One (1) year for a license surrendered for a mental or physical illness.

10 **12. VIOLATION OF PROBATION.** If Respondent violates the conditions of his  
11 probation, the Board, after giving the respondent notice and an opportunity to be heard, may set  
12 aside the stay order and impose the stayed discipline (denial/revocation/suspension) of the  
13 respondent's license. If during probation, an accusation or petition to revoke probation has been  
14 filed against the respondent's license or the Attorney General's Office has been requested to  
15 prepare an accusation or petition to revoke probation against the respondent's license, the  
16 probationary period shall automatically be extended and shall not expire until the accusation or  
17 petition has been acted upon by the Board.

#### 18 ACCEPTANCE

19 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
20 stipulation and the effect it will have on my Psychiatric Technician License. I enter into this  
21 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
22 to be bound by the Decision and Order of the Board of Vocational Nursing and Psychiatric  
23 Technicians.

24  
25 DATED: 6-21-12

Michael Duane Rose  
MICHAEL DUANE ROSE  
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Vocational Nursing and Psychiatric Technicians of the Department of Consumer Affairs.

Dated: June 26, 2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

*Carol Romeo*

CAROL ROMEO  
Deputy Attorney General  
*Attorneys for Complainant*

SF2011203059  
Stipulation.rtf

**Exhibit A**

**Petition to Revoke Probation No. PT 2007-547**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CAROL ROMEO  
Deputy Attorney General  
4 State Bar No. 124910  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2141  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

**FILED**

**FEB - 2 2012**

Board of Vocational Nursing  
and Psychiatric Technicians

8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against,

Case No. PT 2007-547

13 **MICHAEL DUANE ROSE**  
14 **645 Montezuma Street**  
15 **Rio Vista, California 94571**

PETITION TO REVOKE PROBATION

16 **Psychiatric Technician License No. PT**  
17 **28498**

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Petition to Revoke  
21 Probation solely in her official capacity as the Executive Officer of the Board of Vocational  
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about March 24, 1993, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Psychiatric Technician License Number PT 28498 to Michael Duane Rose  
25 (Respondent). The Psychiatric Technician License was in effect at all times relevant to the  
26 charges brought in this Petition to Revoke Probation and will expire on May 31, 2012, unless  
27 renewed.

28 ///



3. In a disciplinary action entitled "In the Matter of Accusation Against Michael Duane Rose," Case No. PT-2007-547, the Board of Vocational Nursing and Psychiatric Technicians, issued a decision, effective November 28, 2008, in which Respondent's Psychiatric Technician License was revoked. However, the revocation was stayed and Respondent's Psychiatric Technician License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 4520 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code ' 4500, et. seq.)

6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of the Code, the Board may renew an expired license at any time within four years after the expiration.

# PETITION TO REVOKE PROBATION

## FIRST CAUSE TO REVOKE PROBATION

(Compliance with Probation Program and Quarterly Reporting Requirements)

7. At all times after the effective date of Respondent's probation, Condition 2 stated:

**"COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORTS REQUIREMENTS.** Respondent shall fully comply with terms and conditions of the probation established by the board and shall cooperate with the representatives of the board in its monitoring and investigation of his compliance with the Probation Program.

1 "Respondent shall submit quarterly reports, under penalty of perjury, in a form required by  
2 the bureau. The reports shall certify and document compliance with all the conditions of  
3 probation."

4 8. Respondent's probation is subject to revocation because he failed to comply with  
5 Probation Condition 2. Specifically, on January 25, 2010, Respondent was notified that the  
6 Board did not receive his January – March 2009 and July – September 2009 *Quarterly Written*  
7 *Reports*. Respondent submitted his next five (5) reports in a timely manner; however, he failed to  
8 submit his April – June 2011 *Quarterly Written Report*.

#### 9 SECOND CAUSE TO REVOKE PROBATION

##### 10 (Employment Requirements and Limitations)

11 9. At all times after the effective date of Respondent's probation, Condition 7 stated:

12 "EMPLOYMENT REQUIREMENTS AND LIMITATIONS. During probation,  
13 respondent shall work in his licensed capacity in the State of California. This practice shall  
14 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

15 "While on probation, respondent shall not work for a nurses' registry or in any private duty  
16 position, a temporary nurse placement agency, as a faculty member in an accredited or approved  
17 school of nursing, or as an instructor in a Bureau approved continuing education course except as  
18 approved, in writing, by the Bureau. Respondent shall work only on a regularly assigned,  
19 identified and predetermined work site(s) and shall not work in a float capacity except as  
20 approved, in writing, by the Bureau."

21 10. Respondent's probation is subject to revocation because he failed to comply with  
22 Probation Condition 7. Specifically, Respondent failed to work in his licensed capacity for a  
23 minimum of six (6) continuous months and of no less than twenty (20) hours per week.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
4 issue a decision:

5 1. Revoking the probation that was granted by the Board of Vocational Nursing and  
6 Psychiatric Technicians in Case No. PT-2007-547 and imposing the disciplinary order that was  
7 stayed thereby revoking Psychiatric Technician License No. PT 28498 issued to Michael Duane  
8 Rose;

9 2. Revoking or suspending Psychiatric Technician License No. PT 28498, issued to  
10 Michael Duane Rose; and

11 3. Taking such other and further action as deemed necessary and proper.

12  
13 DATED February 2, 2012



14 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
15 Executive Officer  
16 Board of Vocational Nursing and Psychiatric Technicians  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

20  
21 SF2011203059  
22 pet revoke prob.rtf  
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## **Exhibit A**

### **Decision and Order**

**Board of Vocational Nursing and Psychiatric Technicians Case No. PT 2007-547**

1 BEFORE THE DIRECTOR  
2 DEPARTMENT OF CONSUMER AFFAIRS  
3 BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
4 STATE OF CALIFORNIA

5 In the Matter of the Accusation Against:

Case No. PT-2007-547

6 MICHAEL ROSE  
7 645 Montezuma Street  
8 Rio Vista, CA 94571

OAH No. 2008070438

9 Psychiatric Nurse License No.  
10 PT 28498

Respondent.

11  
12 DECISION

13  
14 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the  
15 Director of the Department of Consumer Affairs<sup>1</sup> as the final Decision in the above-entitled matter.

16  
17 This Decision shall become effective on November 28, 2008.

18 IT IS SO ORDERED this 21 day of October 2008.

19  
20  
21 *P. J. Harris*

22 PATRICIA HARRIS

23 Deputy Director, Board/Bureau Support  
24 Department of Consumer Affairs

25  
26  
27  
28 <sup>1</sup>Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE  
BUREAU OF VOCATIONAL NURSING AND  
PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ROSE,  
aka MICHAEL DUANE ROSE,  
aka MICHAEL D. ROSE,  
aka MICHAEL DUWANE ROSE,  
Rio Vista, California

Case No. PT-2007-547

OAH No. 2008070438

Psychiatric Technician License No. PT 28498

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on August 15, 2008, in Vallejo, California.

Deputy Attorney General Carol S. Romeo represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Bureau of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Ben Allamano, Attorney at Law, represented respondent Michael Rose, who was present.

The matter was submitted for decision on August 15, 2008.

**FACTUAL FINDINGS**

1. On March 24, 1993, the Board of Vocational Nursing and Psychiatric Technicians<sup>1</sup> issued psychiatric technician license number PT 28498 to respondent Michael Rose, also known as Michael Duane Rose, also known as Michael D. Rose, also known as Michael Duwane Rose. The current license expiration date is May 31, 2010.

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<sup>1</sup> On July 1, 2008, the Board of Vocational Nursing and Psychiatric Technicians became the Bureau of Vocational Nursing and Psychiatric Technicians.

2. On August 27, 2007, in Solano County, respondent was convicted on a plea of nolo contendere of violating Penal Code section 653k (carrying a switchblade knife), a misdemeanor. Imposition of sentence was suspended and respondent was placed on summary probation for one year. Conditions of probation included serving one day in county jail, not owning or possessing any illegal knives, and completing an eight-hour weapons class.

3. The incident underlying this conviction occurred on July 11, 2007, after respondent's 15-year-old son informed him that a schoolmate had stolen a lighter from respondent's house. Respondent drove his son to look for the other boy. When they spotted him, respondent allowed his son to get out and punch the boy in the head. (Respondent denies knowing his son was going to hit him.) All the while, respondent was yelling out the window of his van. He shouted obscenities at the boy, including a few "F-bombs," and called him a "little bitch." He also said, "You're dead to us," meaning that the boy was no longer welcome in respondent's house. When contacted by Rio Vista police officer Rodolfo Granados, respondent first denied that his son had hit the other boy. Later, respondent admitted to Granados that he was lying to keep his son from getting in trouble, and that he had instructed his son to also lie to police. Respondent admitted that he had had two beers to drink before the confrontation. Officer Granados confiscated a switchblade knife from respondent's pants pocket. (The knife had been a gift to respondent from his older son; he used it as a tool, not a weapon.) Respondent was taken into custody for violating Penal Code section 148, subdivision (a)(1) (delaying/obstructing peace officer) and section 653k (carrying a switchblade knife). At the police station, he was cited and released. The misdemeanor complaint filed on August 8, 2007, charged a violation of Penal Code section 653k only.

4. Respondent acknowledges that his intemperate behavior and lack of candor with the police were wrong. He realizes he was setting a bad example for his son. The lesson he has learned is that his actions reflect on others, especially his children, and that he should tell the truth and accept the consequences of his actions. Respondent is now more cognizant of his behavior, and he has told his children that they should always be honest.

5. Respondent has complied with all the conditions of his criminal probation. He completed the weapons class on September 23, 2007. At the time of the hearing, he expected to successfully complete probation in less than two weeks.

6. Respondent is a 45-year-old man who lives in Rio Vista with his wife and children (his son is now 16; his daughter is 12). Respondent's 22-year-old son lives in Stockton. Respondent's wife, a former psychiatric technician, suffers from Amyotrophic Lateral Sclerosis (ALS or "Lou Gehrig's Disease"). Her condition has deteriorated to the point where she is now quadriplegic and on a ventilator. Her prognosis is death, but the doctors do not know how long she will live. Respondent stopped working in December 2003, when his wife was placed on a ventilator. Since then, he has stayed home to care for

her full-time. Respondent has no professional help, but his children assist him by feeding and suctioning their mother. Respondent is involved in his children's sports activities, and he tries to keep his wife involved by getting her out to various events. (They have a van with a wheelchair lift.)

7. The last job respondent had as a psychiatric technician was at Napa State Hospital, where he worked from 1998 to 2003. His evaluations there were largely favorable, although he did receive a letter of reprimand, and later a board citation, for an incident in July 2000 where he made some comments that a client found offensive. Respondent has kept his psychiatric technician license current so he can return to work after his wife dies. He prefers that his license not be placed on probation.

8. As of August 11, 2008, the bureau had incurred the following costs from the Office of the Attorney General for the investigation and prosecution of this case:

Deputy Attorney General

2007/08: 13.25 hrs. @ \$158/hr.	—	\$2,093.50
2008/09: 7.75 hrs. @ \$158/hr.	—	\$1,224.50

Paralegal

2007/08: 2.00 hrs. @ \$101/hr.	—	\$ 202.00
TOTAL		\$3,520.00

9. Regarding his financial ability to pay any cost recovery, respondent testified that his family income of \$49,000 to \$50,000 per year (from Social Security disability, disability retirement and workers' compensation) is barely enough to cover their expenses. He submitted a copy of his 2007 federal income tax return, which shows that he and his wife do not earn enough money to pay income tax.

### LEGAL CONCLUSIONS

1. Under Business and Professions Code section 490 and section 4521, subdivision (f), the bureau may suspend or revoke a psychiatric technician's license for conviction of a crime substantially related to the qualifications, functions or duties of a psychiatric technician. A crime is substantially related if "to a substantial degree it evidences present or potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit.16, § 2578.)

2. Respondent's criminal conviction is, by its facts and circumstances (intemperate and verbally abusive conduct toward a juvenile and dishonesty with a police officer), substantially related to the qualifications, functions or duties of a licensed psychiatric technician. Cause to suspend or revoke his license exists under Business and Professions Code section 490 and section 4521, subdivision (f).



3. Even though respondent is not presently working as a psychiatric technician, he could return to work at any time. Therefore, protection of the public requires that some discipline be imposed on his license. It would be appropriate to place respondent on probation for three years.

One of the standard conditions of probation will require respondent to work in his licensed capacity for at least six continuous months for at least 20 hours per week. If respondent's family circumstances prevent him from meeting this requirement, the bureau may wish to modify this condition or extend the period of probation to accommodate his situation.

4. Complainant has requested that respondent be ordered to pay the bureau the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of enforcement are \$3,520.00. (No costs of investigation are claimed.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent did not contest the fact of his conviction, but he did make a plausible (if unpersuasive) argument that the crime was not substantially related to the licensed activity. Respondent's financial circumstances are such that he would be unable to pay any cost recovery award. Consequently, no cost recovery will be ordered.

#### ORDER

Psychiatric technician license number PT 28498 issued to respondent Michael Rose is revoked. However, the revocation is stayed for a period of three (3) years, subject to the following terms and conditions of probation:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the bureau within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the bureau within thirty (30) days of the effective date of the decision, unless the bureau determines that he already submitted fingerprint cards as part of his licensure application process effective July 1,

1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the bureau and shall cooperate with the representatives of the bureau in its monitoring and investigation of his compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the bureau. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the bureau, in writing, within five (5) days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the bureau, in writing, within five (5) days, if he leaves California to reside or practice in another state.

Respondent shall notify the bureau, in writing, within five (5) days, upon his return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of his license. This notification to respondent's current health care employer shall occur no later than the effective date of the decision. Respondent shall notify any prospective health care employer of his probationary status with the bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the bureau's accusation and disciplinary decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the bureau. The reports shall be on a form provided by the bureau, shall include a performance evaluation and such other information as may be required by the bureau.

Respondent shall notify the bureau, in writing, within five (5) days of any change in employment status. Respondent shall notify the bureau, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS/MEETINGS WITH BUREAU REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the bureau, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a bureau approved continuing education course except as approved, in writing, by the bureau. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the bureau.

8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the bureau, before commencing any employment, regarding the level of supervision provided to him while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses,

psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervise psychiatric technicians during the period of probation except as approved, in writing, by the bureau.

9. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the cause for disciplinary action in this matter. The coursework shall be completed no later than the end of the first year of probation, unless the bureau extends the time for completion. If the coursework is not completed by the required date, respondent shall be suspended from practice until he has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The bureau shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the bureau's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall cause the instructor to furnish proof of completion to the bureau within thirty (30) days.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the bureau, including any period during which suspension or probation is tolled.

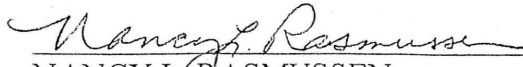
Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement his license shall be subject to any and all terms of this probation not previously satisfied.

11. VIOLATION OF PROBATION

If respondent violates the conditions of his probation, the bureau after giving him notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of his license. If during the period of probation, an accusation or petition to revoke has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against his license, the probationary period shall automatically be extended and shall not expire until the accusation or

petition has been acted upon by the bureau. Upon successful completion of probation, respondent's license will be fully restored.

DATED: September 8, 2008

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings